IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8566 OF 2005

Sau.Vidhya Madhukar Thorat Petitioner

versus

Mahadev Baburao Patil Respondent

Mr.Sanjay Khanzode i/by Paras Kuhad & Associates for petitioner.

Mr.S.M.Kamble for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 27th January 2006

PC :

1. Heard learned counsel for parties.

2. Request is made to adjourn the matter because the learned Senior Counsel is not present in Court today. This request was made on the earlier occasion as well. The matter was adjourned till today. Prior to the vacation this matter had appeared at least on six occasions. In these circumstances request for adjournment is declined.

3. From a perusal of the orders passed by the Court below it is apparent that the suit is pending. The Trial Court as well as the Lower Appellate Court has not granted a part of the relief inasmuch as the request of the petitioner-original plaintiff to use the ingress and outgress in question for passage by vehicles and/or parking thereof is not granted in the absence of the necessary material.

4. In my view, it is not for this Court to reappraise and reappreciate the prima facie material which has led to the Court's below taking a view that the application for interim reliefs can be granted in part. The Trial Court is directed by the Lower Appellate Court to decide the suit itself expeditiously. The order of the Lower Appellate Court is passed on 19th September 2005. The order of the Trial Court which was challenged before the Lower Appellate Court is delivered on 5th July 2005.

5. The learned advocate appearing in support of this petition invites my attention to certain photographs and submits that the petitioner was parking her vehicles. The vehicles were already there when the property was acquired by the

petitioner. She submits that parking was not causing any obstruction or inconvenience to the respondents.

6. In my view, the view taken by the Court below being interlocutory and on the basis of materials produced, it is not necessary to interfere with the same in my limited jurisdiction under Article 227 of the Constitution of India. Petition dismissed.

7. However, if the petitioner desires any further arrangement at an interlocutory stage and points out to the Trial Court the difficulties faced as passage in question is not allowed for plying of vehicles, it will be open for the Trial Court to modify it’s earlier order and grant the request subject, of course, to hearing both sides in that behalf. Reserving the liberty to apply for modification of the order passed by the Trial Court by producing further materials, present petition is dismissed.

(S.C.DHARMADHIKARI, J.)